

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक

C.A. 97/2001

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT/ ACCUSED Hariram Yadav, S/o Dhalloo Ram Yadav alias Baldoo Ram Yadav, Aged 36 years, Agriculturist, Resident of Village Muglani, Outdoor Post Chowki, P.S. Chhuria, District Rajnandgaon, Chhattisgarh. -Versus- RESPONDENT State of Chhattisgarh, Through P.S. Chhuria, District Rajnandgaon, Chhattisgarh.	
	Present :- Shri B.R. Ghosh & Smt. Meera Jaiswal, counsel for the appellant. Shri D.K. Gwalre, Dy. Govt. Advocate for the State.	
	DB: - HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ.	
	ORAL JUDGMENT (Delivered on 30th April, 2007) <u>L.C. Bhadoo, J</u> The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 30-11-2000 passed by the Additional Sessions Judge, Rajnandgaon, in Sessions Trial No.126/2000 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of Kunwaria Bai and sentenced him to undergo imprisonment for life & to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.	

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	2) The case of the prosecution, in brief, is that Kunwaria Bai (since deceased) was the wife of Jhumuklal (PW-1). There is one house of Mohammed Yunish Qureshi (PW-3) on the road and adjacent to the said house, there are two houses of the accused. There is one bore well near the house of the accused. Vishwasa Bai was the wife of Sukhram & sister-in-law of the accused. She died 8 – 10 years back. When Vishwasa Bai died, a meeting was convened in the village, where brother of the accused said that Vishwasa Bai died on account of Kunwaria Bai because she was practicing witchcraft. The matter was got compromised by the villagers. On the fateful day, when Kunwaria Bai went to fetch water from the bore well, accused came there carrying axe in his hand & attacked her. As a result of which she died spontaneously. Thereafter accused ran towards his house carrying axe in his hand. He went to the Police Chowki Chichola and informed about the incident, which was entered into the rojnamcha (Ex.P/18). Thereafter the matter was registered. The Investigating Officer left for the place of occurrence. Body of Kunwaria Bai was sent for post mortem examination to the Primary Health Centre, Churia, vide Ex.P/9 where Dr. S.K. Ahuja, conducted the postmortem & prepared the report vide Ex.P/10. Doctor opined that the cause of death was due to shock & hemorrhage. The death was homicidal in nature. Inquest (Ex.P/5) was prepared by the Investigating Officer on the body of Kunwaria Bai. Site plan (Ex.P/2) was prepared. Axe, which was produced by the accused, was seized under Ex.P/8. Seized articles were sent for examination to the Forensic Science Laboratory, Raipur, from where the report (Ex.P/22) was received. 3) After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Rajnandgaon, who in turn committed the case to	

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	the Court of Sessions Judge, Rajnandgaon, from where learned Additional Sessions Judge, Rajnandgaon, received the same on transfer for trial. 4) In order to establish the charge against the accused/appellant, the prosecution examined 14 witnesses at the trial. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. 5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted & sentenced the accused/appellant as aforementioned. 6) We have heard learned counsel for both the parties. 7) In this case, there is no ocular or direct evidence in order to connect the accused with the crime in question. The whole case rests on the circumstantial evidence. The prosecution had tried to establish the crime against the accused on the following circumstances & motive : i) That the accused was seen running from the place of occurrence carrying axe in his hand. ii) That the axe in question, the weapon of offence, was seized from the custody of the accused on 30-5-2000. iii) That the clothes i.e. full pant & gundi were seized from the accused and same were found stained with blood. <u>Motive</u> :- That the accused was doubting the deceased to be practicing witchcraft and was suspecting that his sister-in-law Vishwasa Bai died on account of witchcraft practices by Kunwaria Bai.	

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	8) As far as first circumstance is concerned, in order to establish this fact Mohammed Yunish Qureshi (PW-3) & Gayatri Bai (PW-13) have been examined. Mohammed Yunish Qureshi (PW-3) has stated that on the fateful day at about 11.00 a.m. he was sitting at the door of his house. He saw that the accused was running away wearing full pant & baniyan, carrying axe in his hand, but nothing was enquired by him from the accused. Gayatri Bai (PW-13) has also stated that on the fateful day at about 11.00 a.m. she saw that the accused was running away carrying axe in his hand. Where he was going she does not know. These witnesses have not stated that they saw the clothes of the accused or the axe was stained with blood. They have also not stated that they saw the accused was running away from the place, where the body of Kunwaria Bai was lying. In fact, by that time, they had not seen the body of Kunwaria Bai. Therefore, merely on the basis of above evidence of these two witnesses the accused cannot be connected with the crime in question, unless there was evidence that the body Kunwaria Bai was lying and from that place the accused was seen running away carrying axe in his hand. 9) As far as second circumstance is concerned, as per the rojnamcha report (Ex.P/18) on the fateful day the accused himself appeared before the Police Chowki Chichola, where he stated that Kunwaria Bai, wife of Jhumuklal, is practicing witchcraft. She had murdered his sister-in-law by practicing witchcraft. His wife was also murdered by her by practicing witchcraft. Therefore, today when Kunwaria Bai came to the bore well for fetching water, he attacked her with axe, as a result of which she fell down on the ground. He is producing the axe. The above First Information Report	

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	made by the accused himself to the extent that he is committing the crime is not admissible. Only the fact that the axe was produced by him & his conduct is admissible. Beyond that, the rest of the First Information Report given by the accused is not admissible in view of the decision of the Apex Court rendered in the matter of Aghnoo Nagesia v. State of Bihar reported in AIR 1966 SC 119. 10) As far as third circumstance i.e. full pant of the accused & axe were found stained with blood is concerned, as per the FSL report (Ex.P/22), there is no report that the blood found on both the articles was of human blood and that too of the blood group of the deceased, without which the accused cannot be connected with the crime in question solely on the basis of FSL report. 11) As far as motive that the accused was doubting the deceased practicing witchcraft is concerned, Jhumuklal (PW-1), husband of the deceased, has stated that Vishwasa Bai, wife of Sukhiram i.e. brother of accused, was died 8 – 10 prior to the date of incident, therefore, a panchayat was convened in which Sukhiram said that Kunwaria Bai is responsible for the death of Vishwasa Bai as Kunwaria Bai, by practicing witchcraft, has committed the murder of Vishwasa Bai. But in para 5, this witness has stated that thereafter they were talking with each other and were visiting the houses of each other. The matter was 8 – 10 years old. Thereafter, panchayat settled the matter. The accused was visiting the house of the deceased. Therefore, it cannot be held that accused had motive to commit the murder of Kunwaria Bai. There is no other evidence in this case to connect the accused with the crime in question.	

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Gowri	12) For the foregoing reasons, we are of the considered opinion that the prosecution has utterly failed in adducing the legal clinching admissible evidence in order to connect the accused with the crime in question. Therefore, the conviction & sentence imposed against the accused/appellant cannot be sustained. 13) In the result, the appeal succeeds. Conviction & sentence imposed upon the accused/appellant under Section 302 of the Indian Penal Code are set aside; he is acquitted of the said charge. He be set at liberty forthwith, if not required in any other case. Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge